



NEWS

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FCC PROPOSES PRO-COMPETITIVE STREAMLINING MEASURE FOR LICENSING INTERNATIONAL SUBMARINE CABLE SYSTEMS

The Commission today took major steps to streamline the submarine cable landing licensing process and promote competition in that market. The Commission adopted a proposal that would speed up the authorization process for many international submarine cable providers and enable these firms to compete more effectively in today's market – a market that is at the core of the global information revolution.

The Notice of Proposed Rulemaking (NPRM) adopted today recognizes the need to move with the swift pace of the market and to tailor FCC licensing processes to encourage rapid, facilities-based entry by multiple firms that can bring new capacity to keep up with increased demand.

In recent years there has been an explosive growth in the number and capacity of submarine cables. This demand has been triggered by the demand for Internet backbone and data transmission. The proposals adopted today further streamline the Commission's licensing processes and promote competition in the Internet-driven submarine cable market. This streamlining measure follows upon the regime for International Section 214 authorizations in which the Commission has identified certain categories of applications that do not pose competitive risks and can therefore be processed quickly.

In its 1999 *Japan-U.S. Order*, the Commission stated that it would commence a broader proceeding to examine how the Commission's policies regarding licensing submarine cables might best promote competition and benefit consumers. The Commission's International Bureau developed many of its recommended proposals to the Commission based upon recommendations made at a Public Forum held by the Bureau in November 1999 and individual meetings with market participants and Bureau staff. The NPRM adopted today proposes streamlining measures to balance three key concerns: (1) the need for an expedited licensing process to speed the deployment of cable capacity to the market; (2) the need for careful Commission review of certain applications to guard against anticompetitive behavior; and (3) the need for the Commission to establish a model approach that could be used around the world.

Background:

Streamlining Options:

The NPRM's streamlining proposal would provide both regulatory certainty and choice. Specifically, the NPRM proposes a mechanism under which an applicant for a submarine cable landing license can obtain expedited processing of its application.

The NPRM proposes the following three options, any one of which would qualify an applicant for streamlined review:

- The first streamlining option is a demonstration that the route on which the proposed cable would operate is competitive. A route is "competitive" under the proposal when at least three independently controlled cables, including the proposed cable, serve the route.
- The second streamlining option is a demonstration that the proposed cable system will be controlled predominantly by new entrants. An applicant that is providing service on the route for the first time could satisfy this proposed streamlining criterion simply by certifying that the "key applicant group" of the proposed cable does not control any existing wet link capacity on the route to be served by the proposed cable. Alternatively, for a proposed cable whose "key applicant group" controls existing capacity on the route to be served by the proposed cable, the applicant could make a showing that it controls less than 50 percent of the existing wet link capacity on the route.
- The third streamlining option is a demonstration of pro-competitive arrangements regarding landing stations and competitive backhaul (transit between cable landing stations and the public network), as well as capacity upgrades and use of capacity.

Failure to qualify for streamlining would not necessarily result in denial or delay of an application. It would simply mean that the application would be reviewed, without prejudice, on a non-streamlined basis.

Other Issues:

Although noting that cable landing licenses are conditioned on obtaining approval from the Secretary of State, the NPRM proposes that, if an application qualifies under one of the three streamlining options, the Commission will grant the application within 60 days. Separate from streamlining, the Notice also proposes to continue its private submarine cable policy in order to further stimulate competition in the market, but would not abandon the distinction between submarine cable systems which operate on a common carrier and a non-common carrier basis. It also seeks comment on the routine conditions imposed on submarine cable licensees. The Notice also proposes to provide clarity and regulatory relief by proposing a definition of "applicant" for a submarine cable landing license that exempts any owner of less than a 5 percent interest (other than landing station owners).

Action by the Commission, June 8, 2000, by Notice of Proposed Rulemaking (FCC 00-210). Chairman Kennard, Commissioners Ness, Powell and Tristani with Commissioner Furchtgott-Roth dissenting and Commissioners Ness and Furchtgott-Roth issuing separate statements.

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